

Domesday Book and the law

Society and legal custom in early medieval England

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Introduction

Disputes and the inquest

One of the striking things about the legal information preserved in Domesday Book is just how much was in dispute at the end of the Conqueror's reign. Evidence concerning several thousand complaints can be found in the text, accusing those who had possession of land, or rights, or men of holding them outside the law. Sometimes these complaints in Domesday Book are both specific and double-sided and include the arguments of litigators and the responses of local witnesses and juries. The survey's Hampshire folios, for example, include a detailed description of a suit between William de Chernet and Picot the Sheriff:

Picot holds two and a half virgates from the King. TRE Vitalis held them as a manor in alod from King Edward . . . William de Chernet claims this land, saying that it belongs to the manor of Charford in the fee of Hugh de Port, through the inheritance of his antecessor. He brought his testimony for this from the better and old men from all the county and hundred. Picot contradicted this with his testimony from the villeins, common people, and reeves, who wished to defend this through an oath or the judgment of God, that he who held the land was a free man and could go where he wished with the land. But William's witnesses would not accept any law but the law of King Edward, until it is determined by the King.¹

Such detailed descriptions are rare, but they do suggest that behind the more typically laconic accounts of disputes in Domesday lay angry argument and loud, heartfelt opinion.

More often Domesday Book recounts only one side of a story. In Northamptonshire, for example, Guy de Raimbeaucourt's fee included land in Isham. Although this holding was recorded under Guy's rubric, Domesday ends its description of that place by noting that the Bishop of Coutances claimed "three little gardens" there.² We are not told what Guy thought of this statement or how he defended himself against it, but it is clear from this notice that the matter was discussed during the inquest. At other times seemingly extraneous discussions of livery are included in the text that could only have originated from the *ex parte* pleading of lords at the inquest who

¹ F 622.

² F 1230.

were making claims or fending them off. In Derbyshire, for example, Domesday Book details the way Walter d'Aincourt came into the thegn Wada's land in Brampton and Wadshelf, explaining that "Walter vouches the King to warranty, and Henry de Ferrers as having given him livery."³ Because the whole of Walter's fee in the county, with the exception of this land, had once belonged to the thegn Swein Cild, it looks as if Walter felt it necessary or was required to explain how exactly it was that he had come into the holdings of another Englishman.⁴ Similarly, oddly detailed entries in Domesday which give potted histories of estates suggest that some argument or threat to title had been raised at the inquest, hence the information's presentation in the text. Although, for example, no clear complaint was registered in Domesday's description of Kenchester, Herefordshire, it seems likely, nonetheless, that Hugh the Ass had made one during the inquest: "Hugh the Ass holds four hides in Kenchester . . . Hugh loaned a hide of this land to [the long-dead] Earl William, and the earl, in turn, gave it to King Maredudd. His son Gruffydd now has two bordars there."⁵ Although litigious words like *reclamavit* or *invasit* are not used here, Hugh apparently worried over his hide of land.

Such anxieties and complaints form the bulk of information in Domesday Book not concerned with the text's manorial or tenurial accountings. It has long been recognized that much of Domesday's most familiar information – its data on hidation, values, peasant population, livestock, and fields – was probably taken from administrative records such as geld rolls, lists of dues from royal estates, and manorial surveys,⁶ or from returns drawn up by tenants-in-chief specifically for the inquest.⁷ This information may have been approved of or improved by Domesday's jurors, but it is unlikely that it was generated by them or discussed at any great length during the inquest.⁸ Of

³ F 331.

⁴ DB, i, 276v.

⁵ F 752.

⁶ For the kinds of administrative documents that stand behind Domesday Book, see S. P. J. Harvey, "Domesday Book and its predecessors," *EHR*, 86 (1971), 753–73 and "Domesday Book and Anglo-Norman governance," *TRHS*, 5th series, 25 (1975), 175–93. For the texts of surviving vernacular administrative records, see Robertson, *Charters*, nos. 39, 52, 54, 84, 104, 109, 110, appendix 1, nos. 4, 5, appendix 2, nos. 3, 9.

⁷ This is the impression left by the fullest entries of "Evesham A" and "Bath A," which represent material drawn up by tenants-in-chief before the Domesday inquest, and which include information on hundreds, villis, TRE and TRW tenants, values, peasants, livestock, and plowteams. For the texts of these two surveys, see P. H. Sawyer, "Evesham A, a Domesday text," *Worcester Historical Society, Miscellany*, 1 (1960), 3–36 and *Two Cartularies of Bath Priory*, ed. W. Hunt, *Somerset Record Society*, 6 (1893), 67–8. That lay tenants-in-chief were also capable of providing detailed written surveys for the inquest is suggested by Guy de Raimbeaucourt's returns, which are probably preserved in a text published in G. H. Fowler, "An Early Cambridgeshire feodary," *EHR*, 46 (1931), 442–3. For other important discussions of these returns in the making of DB, see P. H. Sawyer, "The 'original returns' and Domesday Book," *EHR*, 70 (1955), 177–97; and H. B. Clarke, "The Domesday satellites," in *Reassessment*, 50–70. For marginalia in Little Domesday Book indicating that tenants provided such returns, see below, subject index, XI.2, under "returns." See also H. C. Darby, *Domesday England* (Cambridge, 1977), 105–10, 118, and appendixes 5, 6, and 7.

⁸ As H. B. Clarke so cogently put it, "the nature of these satellites gives strength to the argument that the prime concern of the hundredal juries was with landholders and landholding and that the wealth of

the 1,000 explicit references to inquest testimony in Domesday Book, less than a dozen concern the survey's brute statistics. But much of the text is taken up with the kinds of detail that would not have been included in the written documents used to generate the statistics of the survey. Discussions of grants, livery, mortgages, sales, antecession, and the like are much more likely to have resulted from the conversations of jurors or the complaints of lords: indeed these topics are often linked specifically in the text with oral testimony.⁹ The facts and figures of the survey were important to the Conqueror and his administrators: when William commissioned the survey in late 1085, and when orders were sent out to begin its compilation, such material was demanded by the King.¹⁰ Too often, however, these figures are seen as the sole reason behind the inquest and the sole reason for using it. But the courts called together in 1086 and the commissioners sent out by the King to preside over them were very much concerned with the survey's more anecdotal information. Imbedded in Domesday's otherwise brutalist prose are several thousand short narratives which describe legal customs or legal or illegal activity that have little to do with the accounting of swine pastures or the numbers of slaves. These narratives have fossilized much of the real work of the 1086 courts – that is, sorting through complaints over title. Such disputes are not, as is often thought, confined to the *clamores* and *annexationes* that form the appendices of a few northern and eastern shires, but are, rather, found scattered across the whole of Great and Little Domesday.¹¹

The abundance of legal narratives in the survey suggests that we should take more seriously the twelfth-century view of Richard fitz Nigel, that one of the central reasons for the holding of the Domesday inquest was “in order that every man be content with his own rights and not encroach unpunished on those of others.”¹² Many of the survey's fragmentary legal narratives speak unambiguously of unjust actions and employ the vocabulary of evasion or annexation (see table 1). Other of Domesday's legal anecdotes are not linked explicitly in the text to an assault on title or to questions over seisin, but it is difficult to imagine any other reason for their discussion at the inquest or their inclusion in the survey (see table 2). And when these narrative passages are read in context, this connection is made manifest. One hundred and thirty-four post-Conquest grants by named laymen, for example, are preserved in Domesday Book. It is easy to think of these rather gnomic descriptions of grants as accidental asides. But when read together, their

manorial detail was added behind the scenes by stewards, bailiffs, or village reeves” (Clarke, “Domesday satellites,” p. 45).

⁹ See below, chapter 2.

¹⁰ ICC, 97; ASC (E), 1085; J. C. Holt, “1086,” in *Domesday Studies*, 47, 49.

¹¹ See figures 1 and 2.

¹² Richard fitz Nigel, *Dialogus de Scaccario*, ed. Charles Johnson (London, 1950) and revised F. E. L. Carter and Diana E. Greenway (Oxford, 1983), 63. This view is said in the *Dialogus* to be that of Henry of Blois, Bishop of Winchester and grandson of William the Conqueror (ibid, 63).

Table 1. *Frequency of select illegal actions*

Words for	Number of times used in Domesday Book
Annex	135
Claim	512
Disseise	24
Keep back	32
Seize	48
Take away	168
Total	919

Table 2. *Frequency of select legal actions*

Words for	Number of times used in Domesday Book
Deliver	71
Grant	344
Gift	100
Lease	46
Livery	70
Mortgage	46
Purchase	79
Seise	71
Total	827

purpose is evident. Of the 134 grants, 18 concern property given by men living and thriving in 1086; and of these, 13 represent gifts to monasteries. The remaining 116 grants, however, are notices of the gifts of deceased or disgraced donors or former sheriffs, mostly to laymen; in other words grants that were difficult to warrant in 1086.¹³ Notices of these grants, therefore, do not represent some arbitrary or idiosyncratic set of asides, but are, rather, a relic of 1086 testimony generated by insecure title. Similarly, mortgages

¹³ The grants of dead donors are F 11, 15, 51–2, 68, 110, 112, 124, 156–7, 377, 420, 468, 472, 497–9, 505, 507, 512–13, 521, 523–4, 526, 530–1, 539, 544, 548, 561–2, 568, 573, 576, 583, 591, 621, 673, 693–4, 699–700, 703, 705, 707–8, 713, 723, 725, 730–1, 733–5, 737, 739–40, 745, 751–2, 755, 757–8, 768, 801, 803, 828, 845, 879, 891–2, 901, 925, 927, 929, 933, 935, 1000, 1058, 1079, 1262–3, 1297, 1300, 1302, 1304, 1326, 1386, 1430, 1499, 1502, 1510, 1520, 1591, 1615, 1662, 1677, 1802, 1829, 2029, 2042, 2049, 2174, 2186–7, 2192, 2232, 2268, 2275, 2284, 2286, 2429, 2472, 2474, 3097, 3216. The gifts of the living are F 104, 111, 549, 616, 729, 753, 842, 1233, 1238, 1318, 1390, 1514, 1534, 1547, 1678, 1851, 1891, 2781. Of these, two deal with gifts of Countess Judith, whose husband Waltheof had been disinherited (F 842, 1238), and thirteen are grants to monasteries (F 104, 111, 549, 616, 842, 1233, 1238, 1318, 1390, 1514, 1648, 1851, 2781).

appear in Domesday Book not in an arbitrary fashion, but pointedly in association with testimony, as an explanation for title or as part of a claim.¹⁴ Between Domesday's descriptions of testimony given and legal or illegal actions taken, the survey preserves the fragments of several thousand legal transactions and disputes. This class of evidence, then, although less systematic than Domesday's endless accountings of mills and pasture, is no less astonishing or precious, since it gives us thousands of glimpses of the workings of the eleventh-century court and the actions of lived law.

Yet in spite of its riches, the legal information in Domesday Book, with the exception of that found in the survey's borough customals, is little used. On occasion scholars have picked through the survey for a perfect example or a legal anecdote, but few have examined the information systematically in the context of the rest of the survey. This is due in part to the hyper-specialized knowledge needed to interpret the text. Most historians of the period have been trained on charters and narrative sources, and only reluctantly turn to Domesday for very specific and localized information. Indeed, the bulk of the period's specialists tend, in the words of Sally Harvey, to approach Domesday Book "with the air of one requested to defuse an explosive device."¹⁵ A few historians in recent years have looked more closely at Domesday's legal information. J. C. Holt and Paul Hyams have studied those descriptions which illuminate the reasons behind William's inquest. R. C. van Caenegem has published 111 passages referring to Domesday lawsuits (taken for the most part from J. M. Bigelow's *Placita*, published long ago) and Patrick Wormald has published a paper on royal pleas held in 1086 which includes an appendix giving citations for 339 such cases.¹⁶ Yet in spite of these efforts, the legal information in Domesday Book remains as intractable as ever.

The argument that stands behind this book is that Domesday Book can and should be read as a legal text. It is, of course, many things; but Domesday's mind-numbing detail and its figures, its intricate accountings and its pains-taking attention to castrated sheep, dairy maids, and eel-renders have blinded us to the fact that Domesday is the most comprehensive, varied, and monumental legal text to survive from England before the rise of the Common Law. When the statistical information present in the great survey is stripped away, one is still left with a remarkable amount of material, almost all of which stems directly from inquest testimony given by jurors impaneled in

¹⁴ For mortgages that operated in this way in DB, see F 48, 60, 141, 199, 461, 482, 484–5, 581, 651, 775, 807, 844, 903, 973, 1028, 1065, 1107–8, 1142, 1157, 1173, 1179, 1196, 1353, 1502, 1574, 2011–12, 2023, 2230, 2680, 2750, 2860, 2936, 3063, 3155, 3191. The exceptions are F 374, 412, 774, 951, 1285, 1581, and 1636.

¹⁵ Sally P. Harvey, "Recent Domesday studies," *EHR*, 94 (1979), 130.

¹⁶ Holt, "1086," in *Domesday Studies*, 41–64; P. R. Hyams, "'No register of title': the Domesday inquest and land adjudication," *ANS*, 9 (1986), 127–41; *Lawsuits*, nos. 21–131; *Placita*, 37–61; Patrick Wormald, "Domesday lawsuits: a provisional list and preliminary comment," in *England in the Eleventh Century: Proceedings of the 1990 Harlaxton Symposium*, ed. Carola Hicks, Harlaxton Medieval Studies (Stamford, Lincs., 1992).

1086, or from the sworn statements of lords and their men. One of the clearest things that emerge when Domesday is treated thus is just how much was being contested in 1086. Through the inquest testimony itself we can see the ways in which the English past and the Norman present complicated tenure and created ambiguous title. This, in turn, gives us new insights into the nature of the Norman settlement, the troubles of the Conqueror's reign, and the absolute necessity of the inquest. Domesday Book read as a legal text also tells us much about the mechanics of justice; about the ways men of the Conqueror's generation protected what they had been given and what they had taken on their own. We can see, as well, both how much they depended on old, familiar legal customs to defend property and how they developed new ways of protecting land at law. Domesday's legal information hammers home the oral and public nature of law in the period and the importance of communal memory in legal custom, and it shows us how much life was lived in the glare of other men's view. Domesday's testimony not only provides us with the contours of legal practice across the eleventh century, but shows us that the law of land, because of the particular circumstances of the Conquest, was developing rapidly during William's reign. Finally, such a reading makes manifest the fact that the Domesday inquest itself was the crucible in which a new, hybrid Anglo-Norman law was forged. Thus the legal information in Domesday Book, if read in context, can provide us with a picture of what the law looked like, the ways in which it was changing, and the means whereby the inquest was a central event in the formation of English law.

What follows is an attempt to make Domesday's legal information more accessible to students and scholars. The 3,217 short texts printed in this volume include all of the legal information in the Exchequer Domesday and in Little Domesday Book – "legal" having been defined broadly. All legal

1355 i, 87v (2-9) Bishop of Winchester; Taunton: To the manor of Taunton have been added land in Lydeard St. Lawrence and Leigh (in Lydeard St. Lawrence), which a thegn held in parage TRE. This thegn could go to whatever lord he wished. TRW these lands are held by Wulfweard and Alweard, who hold them from the Bishop of Winchester through a grant (*concessionem*) of King William. King William granted (*concessit*) these lands to St. Peter and Bishop Walkelin, as he himself acknowledged at Salisbury in the hearing of the Bishop of Durham, whom he ordered to write down this grant of his in the returns (*recognovit apud Sarisberiam audiente episcopo Dunelmensi, cui praecepit, ut hanc ipsam concessionem suam in brevibus scriberet*).

complaints in the text are here, as are notices of inquest testimony, legal customs, and annexations. So, too, are references to legal transactions such as grants, sales, mortgages, and warranty, as are all specific references to antecession and forfeiture. This volume provides translations (with Latin legal terminology included parenthetically) for all of Domesday Book's legal references, each numbered and organized by county, fee, and folio. Each entry has been assigned a unique number (in bold), a folio number to the manuscripts of Exchequer or Little Domesday, the identification number assigned by the Phillimore edition of Domesday Book (the edition most used by undergraduates), the name of the tenant-in-chief under whose rubric the passage can be found, and the placename to which the description has been appended. The small roman numeral signifies the DB manuscript vol. i = Exchequer Domesday and ii = Little Domesday. Readers can thus locate the text in the manuscripts, the facsimile, the nineteenth-century edition, or the Phillimore edition, and can identify the fee and the vill in which the action described pertains. This identifying information is then followed by a short paraphrase of the entry, giving details on the TRE and TRW holders of the land and the property's hidation. The legal information then follows as it appears in Domesday Book itself.